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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION EIGHT

MELODY L. COCHRAN, Plaintiff and Appellant, v. THE BANK OF NEW YORK MELLON TRUST CO., N.A. Defendant and Respondent.	B291949 Los Angeles County Super. Ct. No. BC565336

APPEAL from a judgment of the Superior Court of Los Angeles County, Holly E. Kendig, Judge. Affirmed.

Law Office of Louis P. Dell and Louis P. Dell; Miller & Miller Attorneys at Law and Robert Miller, for Plaintiff and Appellant.

Levinson Arshonsky & Kurtz, Richard I. Arshonsky and Helen Kim Colindres, for Defendant and Respondent.

Melody L. Cochran appeals the trial court's order granting a motion for judgment on the pleadings by Bank of New York Mellon Trust Company, N.A. We affirm.

This case is about who owns 1526 North Avenue 50 in Los Angeles, California. This appeal is the sixth in this fight. (*Cochran v. Bennett* (Sept. 18, 2009, B210747) [nonpub. opn.]; *Cochran v. Starr* (Dec. 8, 2009, B213445) [nonpub. opn.]; *Cochran v. Greenpoint Mortgage Funding, Inc.* (Mar. 9, 2010, B214890) [nonpub. opn.]; *Cochran v. Delonay* (July 16, 2010, B213445) [nonpub. opn.]; *Cochran v. Bank of New York Mellon* (Nov. 9, 2017, B278268) [nonpub. opn.].)

Cochran claims she inherited the place. The Bank does not dispute that. But the Bank points out its predecessor Greenpoint Mortgage Funding, Inc. made two loans on the property, took two deeds of trust for security, these loans are in default, and the Bank wants to foreclose on its liens.

The fifth appeal determined that whatever title Cochran may hold is subject to the Bank's liens. (*Cochran v. Bank of New York Mellon*, *supra*, B278268 ["The effect of the judgment was also unambiguous—Cochran sat on her rights; so while [a different claimant's] title is void and [Cochran] might still hold some title to the property, her title remains subject to [the Bank's predecessor-in-interest's] liens."].)

So on substance this case is simple. As between the Bank and Cochran, the Bank wins, because whatever title Cochran holds remains subject to the Bank's predecessor's liens.

That was the trial court's ruling here: the Bank wins. The trial court granted the Bank's motion for judgment on the pleadings.

Cochran objects to the substance of this ruling, saying she pleaded a valid claim for possession under Civil Code section 1006. This is incorrect. Mere occupancy of real property without other evidence of ownership does not constitute adequate evidence of ownership unless the occupancy has ripened into title by prescription. (*Canal Oil Co. v. National Oil Co.* (1937) 19 Cal.App.2d 524, 530–531, disapproved on other ground in *County of San Bernardino v. Doria Mining & Engineering Corp.* (1977) 72 Cal.App.3d 776, 780.)

Cochran once had other evidence of ownership but years ago courts determined her claim was stale. In 2017, we wrote that the res judicata policies of preserving the judicial system, promoting judicial economy, and protecting parties from vexatious litigation "are well served by barring Cochran's claims. She has all but conceded she is seeking to relitigate her title claims. Yet, she waited three years to bring this suit and only after Bank of New York and [mortgage servicer] Ocwen initiated foreclosure proceedings. In the prior case she had a full opportunity to litigate Greenpoint's interest in the property, so allowing her duplicative claims here would waste judicial resources and continue to harass Greenpoint's successors." (*Cochran v. Bank of New York Mellon*, *supra*, B278268.)

Yet this suit endures. In her reply brief, Cochran claims she has established adverse possession to the house via her earlier lawsuits, beginning with her 2006 complaint. Cochran cites no authority for her startling suggestion that you can defeat your mortgage by filing a lawsuit about it that drags on for at least five years. If that tactic were valid, millions of Californians paying on mortgages would be amazed, as would their lenders. Mortgages would be rare if they could be extinguished so easily.

But making home lending as cheap and available as possible is in the public interest, and Cochran has no precedent for her corrosive idea, which we reject.

So the substance of Cochran's attack on the trial court ruling is invalid.

Cochran also attacks the procedure the trial court followed. She faults the trial court for failing to deny the Bank's motion for judgment on the pleadings because she claims the Bank's motion violated the Code of Civil Procedure in five ways.

First, the Bank did not file an answer to Cochran's complaint before filing its motion, contrary to Code of Civil Procedure section 438, subdivision (f)(2). Yet Cochran has identified no prejudice from this violation of the statute.

Moreover, this requirement applies only if the moving party is a defendant; it does not apply if the court makes its own motion for judgment on the pleadings, which it could have done here. The trial court had leeway to grant the Bank's motion even though the Bank did not file an answer. (Code Civ. Proc., § 438, subds. (b)(2) & (f)(2).)

Second, the Bank did not file a declaration on its meet and confer efforts, nor did it meet and confer, which contravenes Code of Civil Procedure section 439. But a "determination by the court that the meet and confer process was insufficient is not grounds to grant or deny the motion for judgment on the pleadings." (Code Civ. Proc., § 439, subd. (a)(4).) Under the statute, failure to comply with its meet and confer requirements is neither a sufficient nor a necessary condition for denying a motion for judgment on the pleadings.

Third, Cochran argues the Bank violated Code of Civil Procedure section 438, which prohibits motions for judgment on

the pleadings that are based on the same grounds as an overruled demurrer, unless "there has been a material change in applicable case law or statute since the ruling on the demurrer." (Code Civ. Proc., § 438, subd. (g)(1).) Although the Bank's motion was based in part on arguments it raised in earlier demurrers, it was also based on new arguments: that Cochran's possession claim is a prohibited quiet title action, and that Cochran failed to plead sufficient facts to allege title by prescription, as required by Civil Code section 1006.

A motion for judgment on the pleadings may be made where it is based on different grounds than an earlier demurrer. (Code Civ. Proc., § 438, subd. (g)(2).) The repetitive character of this litigation is lamentable. But we would not cure the problem by insisting on more repetition.

Fourth, Cochran cites without argument Code of Civil Procedure section 439, subdivision (b). Because Cochran has not explained why Code of Civil Procedure section 439, subdivision (b) compels reversal, or even why the section is relevant, she has waived any potential arguments based on it. (*Benach v. County of Los Angeles* (2007) 149 Cal.App.4th 836, 852; see also Cal. Rules of Court, rule 8.204(a)(1)(B) ["Each brief must: . . . support each point by argument . . . ."].)

Fifth, Cochran argues that the Bank's motion is a prohibited motion for reconsideration that fails to meet the statutory requirements of Code of Civil Procedure section 1008. In making this argument, she again ignores that the Bank makes arguments that were not raised in its previous demurrers.

We do not reach the issue of whether a common law, non-statutory motion for judgment on the pleadings is permissible, because the Bank's motion can be sustained within the rubric of

Code of Civil Procedure sections 438 and 439. (*See CPF Agency Corp. v. R&S Towing* (2005) 132 Cal.App.4th 1014, 1020–1021, quoting *Sole Energy Co. v. Petrominerals Corp.* (2005) 128 Cal.App.4th 187, 193 [" ' "The nature of a motion is determined by the nature of the relief sought, not by the label attached to it. The law is not a mere game of words." . . . The principle that a trial court may consider a motion regardless of the label placed on it by a party is consistent with the court's inherent authority to manage and control its docket.' "].)

Finally, this court did not hold, as Cochran claims, that "a factual determination of the [possession cause of action] was required." We held Cochran's deposition testimony created a non-dispositive factual conflict that did not constitute sufficient grounds to sustain a demurrer. That did nothing to reduce the possibility that a judgment on the pleadings could be granted on other grounds, which the Bank has now asserted in its motion.

DISPOSITION

The judgment is affirmed. The Bank is awarded costs on appeal.

WILEY, J.

WE CONCUR:

GRIMES, Acting P. J.

STRATTON, J.